IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1419 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE BANK OF SAURASHTRA - Appellant(s)
Versus
GAYATRI MINERALS & 1 - Defendant(s)

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Appearance :
MR JD AJMERA for Appellant(s) : 1,
MR RV DESAI for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/08/2006

ORAL JUDGMENT

Present appeal has been filed by the appellant original plaintiff (hereinafter referred to as “the plaintiff) State Bank of Saurashtra challenging the judgment and decree passed by the learned City Civil Court at Ahmedabad dated 7-9-1982 passed in Civil Suit

No.3108 of 1978 in so far as awarding the interest on the amount due and payable to the plaintiff at the rate of 6% per annum only and in not awarding the rate of interest agreed by the defendants i.e. not awarding the contractual rate of interest.

2. It appears from the record that the plaintiff filed the suit for recovery of the amount due and payable by the defendants and that it is not in dispute that the loan was sanctioned in favour of the defendants and the defendants agreed to pay interest at the rate of 17% per annum. It appears that the defendants submitted pursis below Exh-30 admitting that Rs.50,783.73paisa was due and payable and at the time of summons for judgment, an amount of Rs.13,883.73paisa was due and payable and thereafter in all Rs. 39,458.95paisa was paid and that he admits that Rs.11,324/- was due and payable to the plaintiff bank. However, he requested for installment and interest at the rate of 6% from the date of institution of the suit till the actual payment. The said pursis was singed by the learned advocate appearing on behalf of the plaintiff and the learned advocate appearing on behalf of the Bank objected to the quantum of installment and has submitted that reasonable installments be given. It was also submitted by the learned advocate appearing on behalf of the plaintiff that interest should be allowed at the agreed rate on the debit balances, as reduced from time to time. The learned trial Court on the basis of the aforesaid admission

and the pursis at Exh-30, passed a decree and granted monthly installments of Rs.500/- beginning from 11-10-1982. The learned trial Court further passed a decree that the defendants to pay the said amount along with the interest at 6% per annum only. Being aggrieved by and dissatisfied with that part of the decree by which the learned trial Court has directed the defendants to pay the amount due and payable with 6% interest, the appellant original plaintiff has preferred the present appeal.

3. Shri Ajmera, learned advocate appearing on behalf of the appellant has submitted that in view of the fact that contractual rate of interest which was agreed by the defendants was 17% per annum and therefore, the learned trial Court has materially erred in passing the decree and directing the defendants to pay the amount due and payable along with the interest at the rate of 6% per annum. He has relied upon Section 34 of the CPC, more particularly, proviso to Section 34 and has requested to allow the present appeal.

4. Shri RV Desai, learned advocate appearing on behalf of the respondents - original defendants has submitted that in view of the pursis submitted by the defendants Exh-30 and when the defendants requested to award the interest at the rate of 6% per annum, the learned trial Court was justified in passing the decree on admission and directing the defendants to pay the interest at the

rate of 6% per annum. It is submitted by him that the learned trial Court has not committed an error and the learned trial Court has exercised the discretion vested in it and therefore, it is requested to dismiss the present appeal.

5. Heard the learned advocates for the parties.

6. It is not in dispute that the transaction in question was a commercial transaction between the plaintiff bank and the defendants and the contractual rate of interest was 17%per annum. It is true that the learned trial Court passed a decree on admission on the basis of the pursis at Exh-30, however, the learned trial Court has directed the defendants to pay the amount due and payable along with the interest at the rate of 6% per annum though the learned advocate appearing on behalf of the bank specifically objected and has submitted that the rate of the interest be awarded as agreed by the defendants. In view of the fact that the agreed contractual right of interest was 17% per annum, considering the provisions of Section 34 of the CPC, the learned trial Court has committed an error in directing the defendants to pay the dues with interest at 6% per annum. The learned trial Court was not justified in not awarding the contractual rate of interest which was at 17% per annum. The contention on behalf of the defendants that the learned trial Court has exercised the discretion, it is required to be noted

that even while exercising the discretion, the learned trial Court ought not to have ignored Section 34 of the CPC. In view of the above and the commercial transaction and the rate of interest agreed by the defendants which was at 17% per annum, the judgment and decree passed by the learned trial Court in so far as it relates to awarding the interest at the rate of 6% per annum requires to be quashed and set aside and the appeal to that extent requires to be allowed and the judgment and decree passed by the learned trial Court is to be modified to the extent that the plaintiff would be entitled to the amount due and payable by the defendants at the rate of 17% per annum i.e. rate of contractual interest.

7. For the reasons as stated above, the appeal succeeds. The judgment and decree passed by the learned trial Court dated 7-9-1982 passed in Civil Suit No.3108 of 1978 is modified to the extent that the appellant herein – original plaintiff would be entitled to the interest at the rate of 17% per annum on the principal balance amount instead of 6% interest. The appeal is allowed. No costs. Decree be drawn immediately.

(M.R.SHAH,J.)

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